

# Chapter 460-44A WAC

## EXEMPT TRANSACTIONS

### WAC

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460-44A-070	Report of sales for offering under WAC 460-44A-060. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-070, filed 3/19/80.] Repealed by 90-09-059, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340 (11).

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-44A-010	Nonpublic offering exemption pursuant to RCW 21.20.320(1). [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-010, filed 3/19/80; Order SD-130-77, § 460-44A-010, filed 11/23/77; Order 342, § 460-44A-010, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
460-44A-020	Text of rule. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-020, filed 3/19/80; Order SD-130-77, § 460-44A-020, filed 11/23/77; Order 342, § 460-44A-020, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
460-44A-030	Selling expense limitations and suitability standards for nonpublic offerings. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-030, filed 3/19/80; Order SD-130-77, § 460-44A-030, filed 11/23/77; Order 342, § 460-44A-030, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
460-44A-040	Form of notification of claim of exemption and report of sales. [Order SD-130-77, § 460-44A-040, filed 11/23/77.] Repealed by 80-04-037 (Order SDO-37-80), filed 3/19/80. Statutory Authority: RCW 21.20.450.
460-44A-041	Form of notification of claim of exemption pursuant to WAC 460-44A-010 through 460-44A-041. [Statutory Authority: RCW 21.20.320 (1) and (9). 80-04-037 (Order SDO-37-80), § 460-44A-041, filed 3/19/80.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
460-44A-045	Report of sales for offering under WAC 460-44A-020. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-045, filed 3/19/80.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
460-44A-060	Limited offering exemption pursuant to RCW 21.20.320 (9). [Statutory Authority: RCW 21.20.320 (1) and (9),

### **WAC 460-44A-050 Isolated transactions—Sales not involving a public offering.** (1) An "isolated transaction" within the meaning of RCW 21.20.320(1) includes:

(a) Subject to the limitation of (b) of this subsection, any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution;

(b) Any sale satisfying the requirements of (a) of this subsection that is effected through a broker-dealer, provided that it is one of not more than three such transactions effected by or through the broker-dealer in this state during the prior twelve months;

(c) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to:

(i) Brokers' transactions in accordance with section 4(4) of the Securities Act of 1933 and Rule 144 thereunder; or

(ii) Any other transaction not effected through a broker-dealer and not involving a distribution, if the sale, including any other sales of securities of the same class during the prior twelve months inside or outside this state by the person, does not exceed 1% of the outstanding shares or units of that class; or

(d) Any sale of a security by or on behalf of an issuer that is one of not more than three such transactions inside or outside this state during the prior twenty-four months.

An exemption provided by (a), (b), (c), or (d) of this subsection shall not be available for any offering made in a manner inconsistent with the limitations set forth in (a), (b), (c), or (d) of this subsection, respectively.

(2) "Sales not involving a public offering," within the meaning of RCW 21.20.320(1), is interpreted by the director in a manner consistent with section 4(2) of the federal Securities Act of 1933 and Securities and Exchange Commission Securities Act Release No. 4552.

Note: Pursuant to RCW 21.20.320(1), the director has promulgated a rule "establishing a nonpublic offering exemption" at WAC 460-44A-506.

[Statutory Authority: RCW 21.20.450, 98-18-032, § 460-44A-050, filed 8/26/98, effective 9/26/98; Order SD-130-77, § 460-44A-050, filed 11/23/77.]

**WAC 460-44A-075 Definition of real estate mortgages when "offered and sold as a unit."** A bond or other evidence of indebtedness secured by a mortgage, deed of trust or agreement of sale, involves an "investment contract other than the bond or other evidence of indebtedness" within the meaning of RCW 21.20.320 (5)(c) if any of the following services are offered or included by an issuer or its affiliates:

- (1) Guarantying the note or contract against loss at any time; or
- (2) Guarantying that payments of principal or interest will be paid; or
- (3) Assuming any payments necessary to protect the security of the note or contract, excluding necessary advances for taxes and insurance; or
- (4) Guarantying a specific yield or return on the note or contract; or
- (5) Paying any interest or premium for a period prior to actual purchase and delivery of the note or contract; or
- (6) Paying any money other than that collected from the borrower after the note or contract falls into arrears; or
- (7) Repurchasing the note or contract, provided that, this is not intended to prohibit good faith repurchases as an effort to assist the investor as long as the representation is not made at the time of sale and not as a part of the sales program; or
- (8) Promising the investor a market for the resale of the mortgage paper securities.

[Statutory Authority: RCW 21.20.450, 92-18-008, § 460-44A-075, filed 8/21/92, effective 9/21/92; 80-04-037 (Order SDO-37-80), § 460-44A-075, filed 3/19/80.]

**WAC 460-44A-100 Nonissuer transactions pursuant to RCW 21.20.320(2)—Manual exemption.** Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days shall be exempt pursuant to RCW 21.20.320(2) provided that, at the time of the transaction:

- (1) The issuer of the security is actually engaged in business and not in the organizational stage, bankruptcy, or receivership;
- (2) The issuer is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;
- (3) The security is sold at a price reasonably related to the current market price of the security;
- (4) The security does not constitute all or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;
- (5) A nationally recognized securities manual designated by the director pursuant to WAC 460-10A-160 or a document filed with and publicly available through the U.S. Securities

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& Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR) contains:

- (a) A description of the business and operations of the issuer;
- (b) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile;
- (c) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and
- (d) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and
- (6) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:
  - (a) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
  - (b) The issuer of the security has been engaged in continuous business (including predecessors) for at least three years; or
  - (c) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

[Statutory Authority: RCW 21.20.450 and 21.20.320(2), 98-17-012, § 460-44A-100, filed 8/10/98, effective 9/10/98.]

**WAC 460-44A-110 Nonissuer transactions pursuant to RCW 21.20.320(2)—Senior securities.** Any nonissuer transaction in a security by a registered salesperson of a registered broker-dealer shall be exempt pursuant to RCW 21.20.320(2) if:

- (1) The issuer of the security is actually engaged in business and not in the organizational stage, bankruptcy or receivership;
- (2) The issuer is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;
- (3) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer;
- (4) Such security has been outstanding in the hands of the public for at least three years; and
- (5) Neither the issuer nor any predecessors has defaulted, within the current fiscal year or the three immediately preceding fiscal years, in the payment of any dividend, interest, principal, or sinking fund instalment on the security when due and payable.

[Statutory Authority: RCW 21.20.450 and 21.20.320(2), 98-17-012, § 460-44A-110, filed 8/10/98, effective 9/10/98.]

(12/21/10)

**WAC 460-44A-200 Exemption from registration for secondary transactions pursuant to RCW 21.20.320(15).** The term "securities previously sold and distributed to the public" as used in RCW 21.20.320(15) shall not include securities sold and distributed pursuant to Securities and Exchange Commission Regulation D that have not been registered with the securities administrator of this state pursuant to the Securities Act of Washington. The administrator finds that in enacting RCW 21.20.320(15) the legislature did not contemplate the exemption of offers and sales of securities in the state of Washington that have been reviewed by neither the Securities and Exchange Commission nor the securities administrator of this state.

[Statutory Authority: RCW 21.20.450 and 21.20.320(15). 86-15-023 (Order SDO-89-86), § 460-44A-200, filed 7/14/86.]

**WAC 460-44A-300 Exemption for offers and sales to accredited investors pursuant to a public solicitation.** (1) Any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule and any exemption adopted by the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933 which provides for public solicitation of accredited investors, shall be exempt under RCW 21.20.320(17).

(2) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" shall have the meaning indicated in WAC 460-44A-501(1).

(3) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under RCW 21.20.190 or 21.20.230 or to an accredited investor pursuant to an exemption available under the Securities Act of Washington, chapter 21.20 RCW. Securities issued under this exemption may only be resold pursuant to registration or an exemption under the Securities Act of Washington, chapter 21.20 RCW.

(5)(a) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(i) Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered with [within] the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(b) Subsection (5)(a) shall not apply if:

(i) The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(ii) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification; or

(iii) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under subsection (5)(a).

(6)(a) A general announcement of the proposed offering may be made by any means.

(b) The general announcement shall include only the following information, unless additional information is specifically permitted by the securities administrator:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in twenty-five words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

(A) Sales will only be made to accredited investors;

(B) No money or other consideration is being solicited or will be accepted by way of this general announcement; and

(C) The securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(7) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (6), if such information:

(a) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(8) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(9) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors

shall not disqualify the issuer from claiming the exemption under this rule.

(10) The issuer shall file with the administrator a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee of three hundred dollars within fifteen days after the first sale in this state.

[Statutory Authority: RCW 21.20.450 and 21.20.320(17). 97-16-121, § 460-44A-300, filed 8/6/97, effective 9/6/97.]

**WAC 460-44A-500 Preliminary notes.** (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 that are also exempted or pre-empted from RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 establishes certain conditions for offerings exempted under Securities and Exchange Commission Rule 506. Unless expressly provided otherwise, such transactions are not exempt from anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the exemption of WAC 460-44A-504, 460-44A-505, or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-508, the burden of proving the exemption, an exception from a definition or condition, or preemption, is upon the person claiming it.

(5) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

(6) Securities offered and sold outside the United States in accordance with Securities and Exchange Commission Regulation S need not be registered under chapter 21.20 RCW. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D and WAC 460-44A-501 through 460-44A-508 inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D and WAC 460-44A-501 through 460-44A-508. Similarly proceeds from such sales would not be included in the aggregate offering price. The provisions of this subsection, however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.

(7) These rules have been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891. WAC 460-44A-503 (1)(b) authorizes an issuer to file Temporary Form D (17 CFR 239.500T) together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect or a copy of the notice of sales on Form D filed electronically or in paper format with the SEC (17 CFR 239.500) until an electronic filing system acceptable to the administrator of securities of the department of financial institutions is implemented that permits the electronic filing of Form D with the administrator or his or her designee.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), (17). 08-16-072, § 460-44A-500, filed 7/31/08, effective 9/15/08. Statutory Authority: RCW 21.20.450, 21.20.320(9), 00-04-094, § 460-44A-500, filed 2/2/00, effective 3/4/00. Statutory Authority: RCW 21.20.450, 21.20.320(9), 21.20.320(1) and 21.20.320(17). 98-11-014, § 460-44A-500, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450, 94-03-061, § 460-44A-500, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-500, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-500, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-500, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-500, filed 7/3/86. Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-500, filed 10/15/82.]

**WAC 460-44A-501 Definitions and terms.** As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee

benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000 excluding the value of the primary residence of such natural person;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504 and 460-44A-505 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than fifty percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-508, except to the extent provided in (a) of this subsection.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-505 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-505 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005(7) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), and (17), and 21.20.210. 11-01-139, § 460-44A-501, filed 12/21/10, effective 1/21/11. Statutory Authority: RCW 21.20.450, 21.20.320(9), 21.20.320(1) and 21.20.320(17). 98-11-014, § 460-44A-501, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450. 94-03-061, § 460-44A-501, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-501, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-501, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-501, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-501, filed 7/3/86. Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-501, filed 10/15/82.]

**WAC 460-44A-502 General conditions to be met.** The following conditions shall be applicable to offers and sales made under WAC 460-44A-504 or 460-44A-505:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and condi-

tions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Securities and Exchange Commission Regulation S.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

If the issuer sells securities under WAC 460-44A-505 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) Financial statement information.

(I) Offerings up to \$2,000,000. The information required in Item 310 of Regulation S-B, 17 CFR Sec. 228.310, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(II) Offerings up to \$5,000,000. The financial statement information required in Form SB-2, 17 CFR Sec. 239.10. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B)(I) or (II) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 CFR Sec. 239.25, the issuer shall provide to each purchaser at the time

the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising:

Provided, however, that publication by an issuer of a notice in accordance with 17 CFR Sec. 230.135c or filing with the Securities and Exchange Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section: Provided further, that, if the requirements of 17 CFR Sec. 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-505 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the

Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), (17), 08-16-072, § 460-44A-502, filed 7/31/08, effective 9/15/08; 98-11-014, § 460-44A-502, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450, 94-03-061, § 460-44A-502, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11), 90-09-059, § 460-44A-502, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450, 89-17-076 (Order SDO-122-89), § 460-44A-502, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-502, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17), 86-15-003 (Order SDO-80-86), § 460-44A-502, filed 7/3/86. Statutory Authority: RCW 21.20.320(1) and 21.20.450, 82-21-031 (Order SDO-98-82), § 460-44A-502, filed 10/15/82.]

**WAC 460-44A-503 Filing of notice and payment of fee.** (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and

Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect from September 15, 2008 through March 15, 2009, or the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required



to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using Temporary Form D (17 CFR 239.500T) must use Temporary Form D but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), and (17). 09-24-078, § 460-44A-503, filed 11/30/09, effective 12/31/09; 08-16-072, § 460-44A-503, filed 7/31/08, effective 9/15/08; 98-11-014, § 460-44A-503, filed 5/12/98, effective 6/12/98; 96-15-063, § 460-44A-503, filed 7/17/96, effective 8/17/96. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-503, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-503, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-503, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-503, filed 7/3/86. Statutory Authority: RCW 21.20.320(1), 21.20.340(11) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-503, filed 10/15/82.]

**WAC 460-44A-504 Exemption for limited offers and sales of securities not exceeding \$1,000,000 to not more than twenty purchasers.** (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and

230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, 33-7300, 33-7644, and 33-8891, or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450, that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9).

(2) General conditions to be met. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503 and 460-44A-508.

(3) Specific conditions to be met.

(a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed \$1,000,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3 (a)(11) or 3(b) of the Securities Act of 1933 or in violation of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.

(b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.

(c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.

(d) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262 is disqualified for any of the reasons listed in WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii).

(f) Notice filing. The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

(4) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(5) WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 and 147. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Small Company Offering Registration (SCOR) program as set out in chapter 460-17A WAC.

(6) Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading..." In addition, issuers must otherwise comply with the anti-fraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of the SCOR Form of chapter 460-17A WAC in determining the disclosure they make. If the SCOR form is used, the issuer should indicate that the Form is being used for an exempt offering under this section rather than in an offering registered under chapter 21.20 RCW and chapter 460-17A WAC.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), (17). 08-16-072, § 460-44A-504, filed 7/31/08, effective 9/15/08. Statutory Authority: RCW 21.20.450 and 21.20.320(9). 00-23-027, § 460-44A-504, filed 11/7/00, effective 12/8/00; 00-04-094, § 460-44A-504, filed 2/2/00, effective 3/4/00. Statutory Authority: RCW 21.20.450, 21.20.320(9), 21.20.320(1) and 21.20.320(17). 98-11-014, § 460-44A-504, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450. 94-03-061, § 460-44A-504, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-504, filed 4/17/90, effective 5/18/90.]

**WAC 460-44A-505 Uniform offering exemption for limited offers and sales of securities not exceeding \$5,000,000.** (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.505; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, and 33-8891 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(17).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 505 (17 CFR Sec. 230.505) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(ii) It is a defense to a violation of (b)(i) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who offered or sold the security was not appropriately registered in this state.

(c) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(d) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.262:

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to the filing of the notice required under this exemption.

(ii) Has been convicted within ten years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(iii) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to the filing of the notice required under this section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(iv) Is subject to an order or judgment of the Washington state administrator of securities or any other state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order,

judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any filing with this or any state entered within five years prior to the filing of the notice required under this exemption.

(vi) The prohibitions of (d)(i), (ii), (iii), and (v) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under (d) of this subsection may act in a capacity other than that for which the person is licensed or registered.

(vii) Any disqualification caused by (d) of this subsection is automatically waived if the Washington state administrator of securities or the state securities administrator or other agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption of this section be denied.

(viii) It is a defense to a violation of this paragraph (d) if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(e) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(3) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(4) The Washington state administrator of securities may, by rule or order, waive the conditions of this section.

(5) The exemption authorized by this section shall be known and may be cited as the "Washington uniform limited offering exemption."

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), (17). 08-16-072, § 460-44A-505, filed 7/31/08, effective 9/15/08. Statutory Authority: RCW 21.20.450. 94-03-061, § 460-44A-505, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-505, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.320(16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-505, filed 7/12/88. Statutory Authority: RCW 21.20.320(17) and 21.20.340(11). 86-15-003 (Order SDO-80-86), § 460-44A-505, filed 7/3/86.]

**WAC 460-44A-506 Conditions pertaining to the offer and sale of securities pursuant to Rule 506 of the Securities Act of 1933.** (1) Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.506; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, and 33-8891 shall satisfy the conditions in subsections (2) and (3) of this section.

(12/21/10)

(2) To qualify for preemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 CFR Sec. 230.506) of the Federal Securities and Exchange Commission.

(3) Offers or sales which are exempted under this section may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this section, the issuer may claim the availability of any other applicable exemption.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9), (17). 08-16-072, § 460-44A-506, filed 7/31/08, effective 9/15/08; 98-11-014, § 460-44A-506, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450. 94-03-061, § 460-44A-506, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-506, filed 8/17/89, effective 9/17/89; 88-15-024 (Order SDO-71-88), § 460-44A-506, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17) and 21.20.340(11). 86-15-003 (Order SDO-80-86), § 460-44A-506, filed 7/3/86. Statutory Authority: RCW 21.20.320(1) and 21.20.450. 85-01-062 (Order SDO-196-84), § 460-44A-506, filed 12/17/84; 82-21-031 (Order SDO-98-82), § 460-44A-506, filed 10/15/82.]

**WAC 460-44A-508 Insignificant deviations from a term, condition, or requirement of WAC 460-44A-501 through 460-44A-505.** (1) A failure to comply with a term, condition, or requirement of WAC 460-44A-504 or 460-44A-505 will not result in the loss of the exemption from the registration requirements of RCW 21.20.140 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole: Provided, That any failure to comply with WAC 460-44A-502(3), 460-44A-503, 460-44A-504 (3)(a), (c), and (e), 460-44A-505 (2)(d) and (e) and (3), paragraph (c) of Securities and Exchange Commission Rule 502, and paragraphs (b)(2)(i) and (ii) of Securities and Exchange Commission Rule 505 shall be deemed to be significant to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of WAC 460-44A-504 or 460-44A-505.

(2) A transaction made in reliance on WAC 460-44A-504 or 460-44A-505 shall comply with all applicable terms, conditions, and requirements of WAC 460-44A-501 through 460-44A-505. Where an exemption is established only through reliance upon subsection (1) of this section, the failure to comply shall nonetheless be actionable by the securities administrator under chapter 21.20 RCW.

[Statutory Authority: RCW 21.20.450, 21.20.320(9), 21.20.320(1) and 21.20.320(17). 98-11-014, § 460-44A-508, filed 5/12/98, effective 6/12/98. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-508, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-508, filed 8/17/89, effective 9/17/89.]